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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 885

CHARLES E. WILLIAMS, *Petitioner;*

v.

HOT SHOPPES, INC., *Respondent.*

Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

PETITION FOR WRIT OF CERTIORARI

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PETITION FOR WRIT OF CERTIORARI

To the Honorable Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Charles E. Williams, petitioner, prays that a writ of certiorari issue to review a final order entered by the United States Court of Appeals for the District of Columbia Circuit on November 17, 1961, dismissing the appeal, upon which a rehearing was denied by order entered March 12, 1962.

OPINIONS BELOW

No opinions were delivered upon the rendering of the judgment sought to be reviewed. However, the appeal was dismissed in accordance with a prior opinion, reported at 110 U.S. App. D.C. 358, 293 F. 2d 835, the pertinent portion of which is printed in the Appendix hereto.

JURISDICTION

The judgment sought to be reviewed was entered November 17, 1961. A timely petition for rehearing was filed November 29, 1961, and was denied by order entered March 12, 1962. The jurisdiction of this Court is invoked under 28 U.S.C. §§ 1254(1), 2101(e) and 42 U.S.C. § 1984.

QUESTIONS PRESENTED

1. Whether the pending amended complaint, alleging the exclusion of petitioner from respondent's restaurant, solely because petitioner is a Negro, under color of state law, custom or usage in violation of the civil rights acts and held sufficient to state a claim for damages under 42 U.S.C. § 1983, states a claim for the civil penalty and full costs provided in the Civil Rights Act of 1875.

2. Whether the Civil Rights Act of 1875, rejected as invalid in cases involving *purely* private discrimination, is constitutional as applied to private action that has the sanction and support of state action.

3. Whether the Act has a separable, uniform state-action application which was intended to stand as valid irrespective of the legality of any other application.

4. Whether the terms "inns" and "other places of public amusement" in the Act, for purposes of the remedial sanction, were intended to, and do, embrace public restaurants.

STATUTE INVOLVED

The pertinent sections of the Act of March 1, 1875, c. 114, 18 Stat. 336, 1 Supp. to Rev. Stat. 148 (1874-1881), 1 Supp. to Rev. Stat. 67 (1874-1891) provide:

> [Sec. 1] That *all persons* within the jurisdiction of the United States *shall be entitled to the full and equal enjoyment of the accommodations*, advantages, facilities, and privileges *of inns*, public conveyances on land or water, theatres, *and other places of public amusement; subject only to the conditions and limitations established by law, and applicable alike to citizens of every race* and color, regardless of any previous condition of servitude.
>
> Sec. 2. That *any person who shall violate the foregoing section by denying to any citizen, except for reasons by law applicable to citizens of every race and color*, and regardless of any previous condition of servitude, *the full enjoyment of any of the accommodations*, advantages, facilities, or privileges in said section *enumerated, or by aiding or inciting such denial, shall*, for every such offense, *forfeit and pay the sum of five hundred dollars to the person aggrieved thereby, to be recovered in an action of debt, with full costs;* and shall also, for every such offense, be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred nor more than one thousand dollars, or shall be imprisoned not less than thirty days nor more than one year: *Provided*, That all persons may elect to sue for the penalty aforesaid or to proceed under their rights at common law and by State statutes; and having so elected to proceed in the mode or the other, their right to proceed in the other jurisdiction shall be barred. But this proviso shall not apply to criminal proceedings, either under this act or the criminal law of any State: *And pro-*

vided further, That a judgment for the penalty in favor of the party aggrieved, or a judgment upon an indictment, shall be a bar to either prosecution respectively. (Emphasis supplied).

STATEMENT OF THE CASE

The original complaint was filed in the U. S. District Court for the District of Columbia November 25, 1959, invoking jurisdiction under 28 U.S.C. §§ 1343, 1355 and 42 U.S.C. §§ 1983, 1984.

The gist of the pleading, aside from the allegation of injury and prayer for relief under the civil rights acts, was that petitioner-plaintiff, during regular business hours, sought the accommodations of a restaurant made generally available to the public by the respondent-defendant; that the latter, while disavowing private prejudice, excluded plaintiff therefrom, solely on a racial basis, under color of the Virginia segregated seating law, and that a systematic practice of restaurants in Virginia to exclude Negroes had been produced by the interplay of governmental and private action. (JA-1).

The complaint was dismissed for failure to state a claim for relief under the civil rights acts. (JA-6). Appeal followed.

The U. S. Court of Appeals for the District of Columbia Circuit rejected the contention that the complaint would permit proof of enforcement of racial segregation in restaurants by state officers and abstained from ruling upon the sufficiency of the claim under 42 U.S.C. § 1983 until a Virginia court determined the applicability of the segregation law to restaurants. 110 U.S. App. D.C. at pp. 360-366, 293 F. 2d at pp. 837-843.

The court below, nevertheless, affirmed dismissal of the claim under the Civil Rights Act of 1875 concluding that, even if the conduct complained of were state action, the Act would not apply. (Appendix).

Upon remand, the claim based on the segregation law was dismissed with leave to amend. The amended complaint was filed June 8, 1961, alleging, in effect: That state officials enforced segregation in restaurants by continually threatening to prosecute restaurant keepers who undertake to accommodate Negroes on a nonracial basis, thus aiding and abetting restaurant discrimination; that defendant excluded plaintiff from the restaurant while disavowing private prejudice and expressly stated that Virginia law, custom and usage compelled the exclusion of Negroes; and that defendant and other restaurant keepers systematically excluded Negroes from their facilities and thus aided and abetted the enforcement of the state custom of racial segregation to the injury of plaintiff in violation of the civil rights acts for which damages, the civil penalty and full costs were being sought. The legal sufficiency of the pleading was put in issue.

The District Court held that the amended complaint was sufficient to state a claim under 42 U.S.C. § 1983 but dismissed the claim under the Civil Rights Act of 1875. The court below, consistent with its prior opinion (Appendix), dismissed the appeal. Review by this Court is now sought.

REASONS FOR ALLOWANCE OF THE WRIT

The issue of whether the Civil Rights Act of 1875 has a valid application to state action is a novel, important and substantial question of federal law which has not been, but should be, settled by the Court. It

was decided below in a way as to conflict with applicable decisions of this Court. The question is of wide and special import extending far beyond the interests of the immediate parties. Hence, review by the Court, for the special reasons stated below, will eminently serve the public interest.

1. The Precise Question of Whether the 1875 Act Uniformly Applies to Discriminatory State Action in All Jurisdictions Throughout the United States, or whether Congress Conceived the Act to Have Precisely That Application, Has Never Been Before the Court

The Act, which has not been repealed, was voided in an application to *purely* private discrimination *unsupported* by state action in the *Civil Rights Cases*, 109 U.S. 3. Later, in *Butts* v. *Merchants & Miners Transportation Co.*, 230 U.S. 126, a case involving purely private discrimination in commerce, the Act was declared wholly invalid because Congress intended it to have a uniform national application and it was not possible to separate the valid application (to purely private action in the commerce jurisdiction) from the invalid application to such discrimination in the states.

In substance, all that *Butts* stands for is that the Act is wholly invalid as applied to purely private action. The Court was not called upon, as here, to decide, nor did it decide, whether the legislation has a separable, uniform, state-action application which was intended to stand as valid irrespective of the illegality of any supposed private action application. Since a state-action application of the Act was never properly before the Court on the record in any case, contentions of invalidity on that ground were not and could not be heard. See *United States* v. *Raines*, 362 U.S. 17, 24-25. See also Wormuth, The Present Status of the Civil Rights Act of 1875, 6 UTAH L. REV. 153 (1958).

The Third Circuit stated, in dictum, that Congress intended by the Act to guarantee to Negro citizens the right to engage in the pursuit of happiness. *Valle* v. *Stengel*, 176 F. 2d 697, 703. The court below held that the Act had no application to state action. And the Fourth Circuit was of the opinion that even if the Act has present validity it does not apply to public restaurants because, under Virginia law, a restaurant is not an inn. *Williams* v. *Howard Johnson's Restaurant*, 268 F. 2d 845, 847n.

In view of the foregoing, the question of whether the 1875 Act was intended to supplement existing civil rights laws and apply against state-sanctioned racial restrictions in public restaurants, in precisely the same way as 42 U.S.C. § 1983 applies, is now ripe for decision and should be settled by this Court.

The demands of *stare decisis* do not preclude a thorough consideration of available evidence of Congressional purpose or a construction of the statute as if it were before the Court for the first time. See *Monroe* v. *Pape*, 365 U.S. 167, 220-222.

2. The Decision Below is in Conflict With Applicable Decisions of This Court

First, it has long been recognized that "** ** a statute valid as to one set of facts may be invalid as to another." *Nashville C. & St. L. Ry.* v. *Walters*, 294 U.S. 405, 415. Compare *St. Louis, Iron Mountain & Southern Ry Co.* v. *Wynne*, 224 U.S. 354, where a statute was voided as a denial of due process, and *Kansas City Southern Ry. Co.* v. *Anderson*, 233 U.S. 325, where the same statute was validated. Compare also *United States* v. *Harris*, 106 U.S. 629, *Baldwin* v. *Franks*, 120 U.S. 678 and *James* v. *Bowman*, 190 U.S. 127, where various applications of the Ku Klux Klan Act of 1871 were voided; and *Logan* v. *United States*, 144 U.S.

263 and *United States* v. *Mosley*, 238 U.S. 383, where other or similar applications of the statute were validated.

Hence, this Court has strictly adhered to a long-standing practice never to decide a constitutional question abstractly or in advance of the necessity therefor, or until faced with cases involving particular provisions as specifically applied to persons who claim to be injured; and never to formulate a rule of constitutional law broader than the *precise* facts to which it is to be applied. *Alabama State Federation of Labor* v. *McAdory*, 325 U.S. 450, 461-462.

Secondly, the rules for dealing with an act of Congress (while they "do not solve the special difficulties in construing a particular statute" because "the variables render every problem of statutory construction unique"[1]) require a construction that will establish its validity.[2] "Even to avoid a serious doubt the rule is the same."[3] Since "the purpose of Congress is a dominant factor,"[4] the rules do "not permit disregard of what Congress commands."[5] Nor do they permit assumptions that Congress would choose "to disregard a constitutional danger zone;"[6] that Congress would open the door to "obvious incongruities and undesirable possibilities;"[7] that Congress would act improvidently or do a vain, futile or senseless thing.[8]

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[1] *U. S.* v. *Universal C.I.T. Credit Corp.*, 344 U.S. 218, 221.

[2] *Porter* v. *Investors Syndicate*, 286 U.S. 461, 470; *Arkansas Natural Gas Co.* v. *Arkansas Railroad Comm.*, 261 U.S. 379, 383.

[3] *NLRB* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1, 30.

[4] *U. S.* v. *CIO*, 335 U.S. 106, 112.

[5] *U. S.* v. *UAW-CIO*, 352 U.S. 567, 589.

[6] *Yates* v. *U. S.*, 354 U.S. 298, 319.

[7] *U. S.* v. *Dege*, 357 U.S. 17, 25.

[8] *Clark* v. *Barnard*, 108 U.S. 436, 460; *Sandberg* v. *McDonald*, 248 U.S. 185, 196.

Finally, the fact that the Act has not been tested since its rejection (in circumstances believed to have been *unintended*) would not prevent validation now, in view of: The application of the Civil Rights Act of 1866 for the first time in 1948 to discrimination enforced by governmental power;[9] the application of the D. C. civil rights ordinances of 1872-73 for the first time in 1953;[10] and the application of the Ku Klux Klan Act of 1871 for the first time in 1961 against unauthorized acts of state officers irrespective of the state remedy.[11]

Despite the basic rules of construction, restated in *Raines, supra*, the court below incorrectly construed the *tentative* exception announced therein, 362 U.S. at p. 23, as extending *Butts* beyond the precise facts presented. And even though exceptions are generally strictly construed, the court below made no attempt to correctly apply the so-called *Butts* exception by determining, *e.g.*: (a) what the *intended* applications of the 1875 Act were; (b) whether, in fact, the vast majority of those intended applications had been invalidated; (c) whether the Act was intended to apply to state action; (d) if so, whether Congress intended the state-action application to stand as valid in event of rejection of the other applications; (e) whether, in the absence of a state remedy for the conduct complained of, the remedial sanction of the Act would be appropriate to enforce equal protection of law; and (f) whether some weighty countervailing policy prohibits validation in the application called for by the pending complaint.

Consequently, the decision below does not accord with the applicable decisions of this Court.

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[9] *Hurd* v. *Hodge*, 334 U.S. 24.

[10] *D. C.* v. *John R. Thompson Co., Inc.*, 346 U.S. 100.

[11] *Monroe* v. *Pape*, 365 U.S. 167.

3. This Case Presents a Serious Federal Question Concerning Discrimination Based on Color

Such a question has been deemed sufficient for granting certiorari. *Boynton* v. *Virginia*, 364 U.S. 454, 457. And it is brought to the Court with a strong belief that the Civil Rights Act of 1875 commands the same momentum of respect as any other federal statute. The possibility that it has present vitality is of particular interest to 20 million non-white people, a great number of whom are being deprived by state action of equal access to publicly licensed and regulated facilities in many parts of the country. The significance of the question is underlined by the fairly recent admission to statehood of Alaska and Hawaii with their multitude of racial groups.

A civil penalty and full costs to compensate for both direct and indirect deprivations of equal protection appear to be reasonable and do not violate due process. *Overnight Motor Transportation Co., Inc.*, v. *Missel*, 316 U.S. 572, 583-584. Such relief would be very helpful to those who find it most difficult, as a practical matter, to prove the precise amount of damages sustained by the humiliation of racial disabilities and to bear the cost thereof; particularly in communities where strong racial prejudice is manifested in customs having the force and effect of law. And it would enhance the implementation of the federal desegregation policy.

For the foregoing reasons, the petitioner prays the Court to grant the writ.

Respectfully submitted,

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APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

CHARLES E. WILLIAMS, *Appellant*

v.

HOT SHOPPES, INC., *Appellee*

Appeal from the United States District Court for the District of Columbia

No. 16,680, September Term, 1961

Before: BAZELON, WASHINGTON and BURGER, Circuit Judges, in Chambers.

Order

Upon consideration of appellee's motion to dismiss, appellant's opposition, and of appellee's reply, it is

ORDERED by the Court that the motion be granted and this appeal is hereby dismissed on the ground that the action of the District Court complained of in this appeal was consistent with the opinion of this Court in *Williams v. Hot Shoppes, Inc.*, No. 15,610, decided April 20, 1961, —— U.S. App. D.C. ——, 293 F. 2d 835.

Per Curiam.

Dated: November 17, 1961

Before: BAZELON, WASHINGTON and BURGER, Circuit Judges, in Chambers.

Order

Upon consideration of appellant's petition for rehearing, it is

ORDERED by the court that the petition for rehearing is denied.

Per Curiam.

Dated: March 12, 1962

No. 15,610, September Term, 1960

Opinion

Before WILBUR K. MILLER, Chief Judge, and EDGERTON, PRETTYMAN, BAZELON, FAHY, WASHINGTON, DANAHER, BASTIAN and BURGER, Circuit Judges, sitting *en banc*.

Washington, Circuit Judge, with whom Wilbur K. Miller, Chief Judge, and Prettyman, Danaher, Bastian and Burger, Circuit Judges, concur.

Appellant Charles Williams, a resident of the District of Columbia, brought suit in the District Court against appellee Hot Shoppes, Inc., a Delaware corporation which operates restaurants in several states and the District of Columbia, to recover a statutory penalty of $500 under Sections 1 and 2 of the Civil Rights Act of 1875, and damages of $5,000 under 42 U.S.C. §§ 1981, 1983, for alleged deprivations of his civil rights. In essence, appellant's claim is that on November 5, 1959, appellee's manager denied him service at its restaurant in Alexandria, Virginia, solely because appellant is a Negro, and because Virginia law requires restaurants either to segregate their

facilities or to exclude Negro patrons.[1] Appellant contended that this refusal to serve him was State action of the sort prohibited by the Fourteenth Amendment and the civil rights laws. The District Court held to the contrary and dismissed the complaint. This appeal followed.

I.

First of all, we think that the District Court properly dismissed the claim for the statutory penalty under Sections 1 and 2 of the Civil Rights Act of 1875.[2] These statutory provisions were held unconstitutional as applied to private intrastate racial discrimination in the *Civil Rights Cases*, 1883, 109 U.S. 3, 3 S. Ct. 18, 27 L. Ed. 835. Later in *Butts* v. *Merchants' & Miners' Transportation Co.*, 1913,

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[1] A further contention, relative to alleged activities of state officials, will be discussed later in this opinion.

[2] All that appellant has told us in writing on the subject appears at page 9 of his supplemental memorandum in this court, where he says:

> "Va. Code sec. 18-327 has been widely regarded as compelling racial segregation in places of public accommodation of all sorts, including restaurants. Such belief was supported by the decisions of the United States District Court for the Eastern District of Virginia (per Judge Albert V. Bryan who has had long experience with Virginia law) that this provision applies to restaurants. *See Nash* v. *Air Terminal Services*, 85 F. Supp. 545, 548 (1949); *Air Terminal Services* v. *Rentzel*, 81 F. Supp. 611 (1949). This widespread belief was also fostered by the repeated public expressions over the years by many prosecuting officials of Virginia that racial segregation in eating places was required by Virginia law. [*E.g.*, WASHINGTON POST, June 24, 1960, p. A-1.]"

Later, appellant filed with us a number of newspaper clippings in support of the statement last made. Assuming the clippings to be correct reports of various episodes, there is no allegation that they came to appellee's attention, or influenced its action.]

[2] Act of March 1, 1875, ch. 114, §§ 1, 2, 18 Stat. 335, provides: [Provisions set forth verbatim.]

230 U.S. 126, 33 S. Ct. 964, 57 L. Ed. 1422, the Supreme Court held that these provisions could not be applied to penalize racial discrimination aboard interstate carriers even though the statute could, in that application, be upheld under the commerce power. The Court reasoned that since Sections 1 and 2 were penal in nature and were intended by Congress to have uniform national application, and since the provisions had been declared unconstitutional as applied to private intrastate racial discrimination, the statute should be held wholly invalid rather than be applied in only a fraction of the cases it was intended to cover. In *United States* v. *Raines*, 1960, 362 U.S. 17, 23, 80 S. Ct. 519, 4 L. Ed. 2d 524, the Supreme Court expressly reaffirmed the *Butts* decision. Therefore, even if appellee's conduct is assumed arguendo to be State action, Sections 1 and 2 of the Civil Rights Act of 1875 have no present validity, and appellant's claim under them was properly dismissed.[3] * * *

[The remainder of the opinion deals with a claim for damages under 42 U.S.C. §§ 1981, 1983, which was dismissed by the District Court on remand.]

[3] A like decision was reached by the Fourth Circuit in another suit brought by the appellant, at an earlier date. Williams v.